IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 32988 of 2005(B)

PETITIONER:

K.P.SOBHANA KUMARI, KALARIKKAL PARAMBIL HOUSE, P.O. THIRUVALI, MANJERI, MALAPPURAM DIST.

BY ADV. SRI.V.RAJENDRAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY DEPARTMENT OF HEALTH, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT MEDICAL OFFICER(HEALTH) MANJERI.

3. K.VIJAYALAKSHMI, KADAVATH HOUSE, MANALODY ROAD, NILAMBUR, MALAPPURAM DISTRICT.

4. T.UNNIKRISHNAN, THEKKUMPURATH HOUSE, P.O.THUVVUR, MANJERI, MALAPPURAM DISTRICT.

BY ADV. SRI.P.CHANDRASEKHARAN PILLAI (FOR R3)
SRI.NIDHI BALACHANDRAN
GOVERNMENT PLEADER, SRI.NANDAKUMAR (FOR R1 & R2)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: TRUE EXTRACT OF THE ORDER DATED 27-6-2005 OF THE 2ND RESPONDENT.

EXT. P2: COPY OF THE ORDER DATED 7-10-04 OF THE 1ST RESPONDENT.

EXT. P3: COPY OF THE REPRESENTATION DATED 9-7-05 OF THE PETITIONER TO THE 1ST RESPONDENT.

EXT. P4: COPY OF THE JUDGMENT DATED 22-7-05 IN W.P.(C) NO.20627 OF 2005.

EXT. P5: COPY OF THE LETTER DATED 24-10-05 OF THE 1ST RESPONDENT TO THE PETITIONER.

EXT. P6: COPY OF THE COURSE CERTIFICATE ISSUED BY THE PRINCIPAL OF THE M.E.S. COLLEGE MAMPAD.

RESPONDENT'S EXHIBITS:

EXT. R1(A): COPY OF CIRCULAR NO.13138/F2/05/H & FWD DT.24.5.05.

EXT. R2(A): COPY OF THE G.O.(MS) NO.265/04/H & FWD DATED 7-10-2004 HAS BEEN CANCELLED AS PER G.O.(MS) NO.44/05/H & FWD DATED 17-2-2005.

EXT. R2(B): COPY OF THE CIRCULAR NO.13138/F2/05/H & FWD DATED 24-5-2005.

/TRUE COPY/

P.A. TO JUDGE

JP

V.GIRI,J.

W.P.(C) NO.32988 of 2005

Dated this the 4th day of August, 2007

JUDGMENT

The challenge in the writ petition is against Exts.P1 and P5. Ext.P1 is the proceedings of the District Medical Officer, Manjeri dtd.27.6.2005, by which appointments were effected to the post of part-time sweeper. Ext.P5 is an order passed by the Government, on a representation filed by the petitioner alleging irregularities in the matter of selection, which led to Ext.P1 order. In Ext.P5, Government has stated that the records relating to the selection did not reveal any irregularity in the selection process.

2. The vacancies in the post of part-time sweepers was sought to be filled up from among candidates sponsored by the Employment Exchange. The candidates were interviewed on 16.6.2005. The petitioner and respondents 3 and 4 were also included in that interview. The petitioner contends that she is a member of the scheduled caste community and she had entered into an inter-caste marriage. She failed in the SSLC examination. The qualification prescribed for the post in question is education between standards 7 to 10. Petitioner contends that in so far as the third respondent is concerned, she had not only passed SSLC, but had also studied for Pre-degree. Therefore, she is disabled from being considered for the post in question. Reference in this regard is made to Ext.R1(a) circular, wherein

candidates having qualification above SSLC are not to be selected. The petitioner contends that since the third respondent had studied for Pre-degree, she is disabled in terms of Ext.R1(a) circular and consequently third respondent ought not to have been selected.

3. In so far as the 4th respondent is concerned, the petitioner contends that the 4th respondent was preferred on account of the fact that he was related to a member of the Selection Committee. What is therefore alleged in relation to the selection of the 4th respondent is personal bias influencing a member of the Selection Committee. I note, at the outset, that the member of the Selection Committee against whom bias is alleged is not a party to the writ petition as such. I am not inclined to go into that question in the absence of such party.

4. Yet another contention raised by the petitioner relates to the awarding of marks. In accordance with Ext.R1(a) circular, she contends that as she is a member of the Scheduled caste and as she has contracted an inter-caste marriage, she is entitled to be considered as belonging to a preferred category in terms of G.O.(MS) 224/80/GAD dated 2.6.1980. The said order is applicable to all candidates sponsored by the Employment Exchange. Reference is also made to Ext.R1(a) circular, wherein it is stated that additional five marks is contemplated for candidates belonging to special category. Though Ext.R1(a) circular does not specify persons who have contracted inter-caste marriage as a special category, it seems from a reading of the same that the category mentioned therein is not exhaustive. If

that be so, the categories which are referred in the above_mentioned government order are also be qualified to be treated as a special category for the purpose of Ext.R1(a) circular. Further, the Government Order in question applies to all appointments through Employment Exchanges.

5. As a result thereof, the petitioner was entitled to be treated as belonging to a special category and consequently she was entitled to an award of five marks for possessing the said privilege.

6. Separate counter affidavit has been filed by respondents 1 and 2. The allegations regarding bias having influenced the selection of the 4th respondent is refuted. At any rate, as I have mentioned above, I am not inclined to go into the question in the absence of the person against whom bias is alleged being on the party array.

5. The second contention raised by the petitioner is to the effect that the third respondent had acquired a qualification further to SSLC, and therefore, she should have been treated as disqualified for the post in question. In as much as the third respondent has only studied for Pre-degree, she may not be disabled by a reason of the said fact. What is contemplated by Ext.R1(a) which mentions about the qualifications above SSLC is obviously an acquisition of a qualification above SSLC. Mere prosecution of the Pre-degree course without acquisition of the said qualification is insufficient to make the person concerned disqualified for the purpose of Ext.R1(a).

6. What remains to be considered is the petitioner's contention

regarding she being entitled to be awarded five marks for being included in a special category within the meaning of 1980 G.O. read with Ext.R1(a) circular. The details of the marks secured by the petitioner and the two selected categories are given in the statement filed by respondent No.1. They are extracted hereunder.

	Sobhanakumari Petitioner	Vijayalakshmi 3rd respondent	Unnikrishnan 4th respondent
Marks for Educational Qualification	5	5	5
Marks for age	7	8 1/2	7
" Employment registration seniority	10	10	10
" Previous experiene in HSD	3	Nil	Nil
" Special Category	Nil	Nil	Nil
" Interview	4	8	8
Total	29	31 1/2	30

7. Apparently, no marks have been awarded to the petitioner under the head of special category. If the petitioner's claim that she belongs to the scheduled caste community and she had also contracted an intercaste marriage is liable to be accepted, then obviously, the petitioner was entitled to be awarded five marks, under the column `special category'. The petitioner has specifically averred in the writ petition that she is a member of

the scheduled caste community and she had contracted an inter-caste marriage. She apparently produced a certificate evidencing the said fact, issued by Tahsildar Nilambur, before the Selection Committee. The aforementioned facts have not been controverted in the counter affidavit filed by respondents 1 and 2. This being the position, Selection Committee should have awarded marks to the petitioner for the reason of her being included in the special category. If such five marks is added, it is obvious that the petitioner should have been selected. There is no other reason which is given in the counter affidavit filed by respondents 1 and 2. Obviously, this error has escaped the attention of the Government while passing Ext.P5 order.

8. I note that there is no counter affidavit by the contesting respondents 3 and 4.

9. In view of the aforementioned discussions, I find that the petitioner was entitled to be selected to the post of part-time sweeper pursuant to the notification which ultimately led to Ext.P1. The selection of the 4th respondent (who has secured marks lower than the third respondent) by overlooking the petitioner, will have to be treated as illegal. At any rate, the petitioner had to be selected and ought to have been selected by the Selection Committee. In the circumstances, I am constrained to interfere with Exts.P1 and P5.

10. The writ petition is, therefore, disposed of in the following terms:

1) Ext.P1 is set aside to the extent to which it has selected 4th respondent to the post of part-time sweeper. The selection of the 3rd

respondent is upheld.

2) The petitioner is declared to be entitled to appointment to the post of part-time sweeper in the place of the 4th respondent.

3) The second respondent shall issue appropriate orders appointing the petitioner as a part-time sweeper and issue other appropriate posting orders as a consequence thereof, within a period of one month from the date of receipt of a copy of this judgment. The petitioner shall make available copies of all relevant records including the certificate stated to have been issued by the Tahsildar, Nilambur evidencing her inter-caste marriage before the District Medical Officer along with a copy of the judgment within a period of three weeks from today. It is made clear that the salary or other benefits which have been disbursed to the 4th respondent, for the period during which she has worked, need not be refunded back to the Government.

The writ petition is allowed as above.

V.GIRI, JUDGE

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